EXPANSION OF INTERACTION BETWEEN LAW ENFORCEMENT INTELLIGENCE-GATHERING AND CRIMINALLY REMEDIAL ACTIVITIES AS A FACTOR IN THE DEVELOPMENT OF EVIDENCE SYSTEM OBTAINED WHEN INSTITUTING CRIMINAL PROCEEDINGS

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ABSTRACT

The relevance of the studied problem is due to the issues that arise when expanding the interaction of law enforcement intelligence-gathering and criminally remedial activities; the current situation in the Russian Federation, as well as difficulties in the development of evidence system obtained when instituting criminal proceedings. In this regard, this article is aimed at a comprehensive analysis of the issues of determining the evidence reliability. The leading approach to the study of this problem is the analysis of the perception of the criminal procedure law of the provisions on the presentation of the results of law enforcement intelligence-gathering activities. The article summarizes the problematic issues related to the lack of criminal procedure regulation of the use of law enforcement intelligence-gathering tools in order to verify existing evidence, as well as the doctrinal approach to the subject under consideration. The materials of the article can be useful for law enforcement officers, as well as for students, undergraduates and postgraduates studying in the field of "World of Law".

Keywords: Law Enforcement Intelligence-Gathering Activities, Law Enforcement Intelligence-Gathering Measures, Law Enforcement Intelligence-Gathering Means, Admissibility of Evidence, Investigative Actions, Evidentiary Law

INTRODUCTION

The dynamic development of the criminal process has demonstrated the intention of the state to improve the efficiency of crime detection in recent years, to create a clearer and more coordinated system of actions aimed at solving criminal procedural problems. Significant changes in the organization of its institutions have taken place, including the initiation of criminal cases, investigative actions, the process of procuring evidence, judicial procedures, etc. There is a general intention of the legislator to give a new impetus to the development of the current system of criminal proceedings. We believe that this is quite justified, since it reflects modern legal realities and shows the timely response of the state to the constantly changing conditions of civil society development and legal relations in it[1].

At the same time, the fragmentary reform of legislation, its selective nature and non-systematic work in this direction are of concern. All this leaves the law enforcement officer with many unresolved questions regarding the consequences of such innovations 1. The above is also true in relation to the legal regulation of issues of interaction between law enforcement intelligence-gathering and criminally remedial activities. Since the 1990s, there has been a lively discussion in the scientific community on this topic. There are different approaches to the content of this interaction: some scholars defend the position to ensure full independence of these two forms of enforcement, while others offer to make the law enforcement intelligence-gathering activities an integral part of the criminal process. Note that a similar controversy took place in the former republics of the USSR, but it was resolved in different ways. Part of the States (Ukraine, Estonia) directly fixed in the criminal process the system of law enforcement intelligence-gathering measures as "special" investigative actions. Other countries (Kazakhstan, Belarus) have partially included the issues of law enforcement intelligence-gathering activities in criminal procedure institutions. Russian legislation has a rather specific approach to solving these problems[2].

The law "law enforcement intelligence-gathering activities" of 1995 2 defined the content and application of the results of the law enforcement intelligence-gathering activities in criminal proceedings. The detailed structure of the Article 11 presented in it indicates the desire of the legislator to significantly reform the area of interaction between the police and the criminal procedure system. The results of the law enforcement intelligence-gathering activities form the basis for collecting evidence in the process of forming reasons for initiating a criminal case, as well as determining ways to verify the existing grounds for this and the reliability of the available evidence. It seems logical that the next step should be a significant change in the criminal procedure law. However, this has not happened yet. Criminal procedure code of the Russian Federation 2001 contains the Article 89, which is very vaguely denoted the ban on the use in proving the results of the law enforcement intelligence-gathering activities, there is a requirement for their consistency as evidence 3. This raises a legitimate question: can in principle the results of the law enforcement intelligence-gathering activities meet the requirements that are imposed on the evidence? It seems that they cannot, since they are the result of law enforcement activities, have been carried out under different rules and occur in different conditions, they are not related to the provision of a system of procedural guarantees. In fact, the results of the law enforcement intelligence-gathering activities are certainly of a legal nature, but they are not of a procedural nature. Today, the Article 89 of the Russian Federation Code of Criminal Procedure continues to be criticized by experts, which, in our opinion, is very objective: this article was a step back, even relative to the earlier provisions of the article 11 of this law (Astafiev, 2007).

At the same time, we believe that the practical expediency of consistently consolidating the implementation and expansion of law enforcement intelligence-gathering capabilities in the criminal process system is not in doubt. However, most likely, this is not realized by the legislator, so there are some novels in which the vector of improving criminal procedure legislation is directed towards strengthening its operational and investigative component. In this regard, the distinction between the law enforcement intelligence-gathering activities and the criminal process is so obvious. Usually, law enforcement intelligence-gathering measures are traditionally of a security nature in relation to criminal proceedings, but at present they are gradually and purposefully moving into the category of direct application of the results of law enforcement intelligence-gathering measures in criminal proceedings.

It should be noted that in general, the current trend is justified, since the lack of a clear legal regulation of the ratio of evidence and law enforcement intelligence-gathering activities creates an artificial gap in the unified process of knowledge in criminal cases.

All the above confirms the fact that the normative regulation of the interaction of law enforcement intelligence-gathering and criminally remedial activities is a very acute and topical

issue that is widely discussed among processualists and requires solutions. The relevance of the issue under study is also determined by the need to develop a concept of such interaction in order to exclude the possibility of its simplification, which can reduce the potential of the criminal procedure mechanism for ensuring guarantees of truth in specific criminal cases. The lack of certainty and consistency in the application of approaches can result (sometimes it already does) in the loss of value orientations by the criminal process and the destruction of its main canons[3] (Baev, 2017).

METHOD

The research is based on the dialectical method of cognition of political, legal and socio-economic processes and phenomena, which has allowed to carry out a comprehensive analysis, generalization, systematization and classification of interrelated relations that make up its object. In addition, the work uses a complex of general scientific (analysis and synthesis, ascent from the abstract to the concrete and from the concrete to the abstract, system) and special (formal-legal, comparative-legal) methods. Their correct use allows us to determine the theoretical basis for the interaction of law enforcement intelligence-gathering and criminally remedial activities in the Russian Federation, to identify patterns of development of the phenomenon under study, ways of improvement aimed at overcoming the difficulties encountered in the development of the system of proving information obtained at the stage of criminal proceedings.

At present, a rather strange situation is occurring, since the features of interaction between the law enforcement intelligence-gathering activities and the criminal process are often much more clearly outlined in the law on law enforcement intelligence-gathering activities , as well as in the instructions for submitting the results of the law enforcement intelligence-gathering activities, than directly in the criminal procedure law. However, the Russian Federation Code of Criminal Procedure is hidden, but consistently increases the possibility of using elements of the law enforcement intelligence-gathering activities in the criminal process, which, unfortunately, is in a way that allows to arbitrarily interpreting the emerging legal innovations[4].

It seems that, by analogy, the role of the results of the law enforcement intelligence-gathering activities should be fixed in the field of verification of evidence: there is no need to further substantiate the already obvious fact of the use of operational search tools for this purpose. It is well known that the investigator, for objective reasons, is simply not able to provide a comprehensive and full-scale verification of the reliability of incoming information, without using the capabilities of the law enforcement intelligence-gathering activities. In this regard, there is a need to change the Article 87 of the Russian Federation Code of Criminal Procedure by including in it a direct indication that the subjects of criminal proceedings can instruct the law enforcement intelligence-gathering activities bodies to verify evidence collected in criminal proceedings. These authorities will be able to legally participate in the process of procuring evidence.

A completely different situation develops at the stage of collecting evidence: The Article 86 of the Russian Federation Code of Criminal Procedure defines the subjects of evidentiary activity of the inquirer, investigator, Prosecutor and the court. At the same time, non-professional participants in the process (plaintiff, suspect, accused, victim, representative, defendant) are only entitled to transfer items and documents in writing to the subjects of the process. For their procedure, the fate of these individuals alone is not the answer. In this regard, there is a legal need to establish appropriate rules. At the same time, it seems strange to indicate that a defender can collect evidence through legal actions. It is clear to all practitioners that their activities are directly related to the process of investigation and judicial proceedings. However, there are no special procedural requirements for the methods and forms of collecting information by the defender, as well as guarantees of their admissibility[5] (Barygina, 2016).

In this regard, there is a question in the world of law why the results of the law enforcement intelligence-gathering activities are not actively used at the legislative level, if they have certain methods of collection and form of consolidation (although not spelled out in the criminal process, but have a legal nature), guarantees of the legality of obtaining information and officials responsible for the implementation of the law enforcement intelligence-gathering measures? The discussion is complicated by the fact that the Article 89 of the Russian Federation Code of Criminal Procedure includes a clearly ambiguous wording prohibiting the use of the results of the intelligence-gathering activities in proving when they do not meet the requirements established for evidence. The main problem is that these requirements are not clear. According to the Article 74 of the Russian Federation Code of Criminal Procedure, this may be any information that allows you to establish the presence or absence of circumstances subject to evidence. At the same time, the admissibility of evidence is disclosed in the Article 75 of the Russian Federation Code of Criminal Procedure in the opposite way: it indicates the circumstances in which the information cannot be considered the evidence. This makes it clear that there is a constant desire to directly include the results of the law enforcement intelligence-gathering measures (in particular, records of negotiations, acts of operational surveillance, etc.) in the system of criminal proceedings as the evidence[6].

We believe that this contradiction can be resolved through the perception of the criminal procedure law of the provisions of the Instructions on the presentation of the results of the law enforcement intelligence-gathering activities, which define the results of the law enforcement intelligence-gathering activities as the basis for the formation of the evidence (Dolya, 2015).

Along with the direct prohibition to use the results of the law enforcement intelligence-gathering activities as evidence and in the presence of specific obligations of the subjects of proof to carry out verification investigative and judicial measures in relation to operational search materials, the concept of "formation" is appropriate and well-founded in procedural structures.

We believe that it should be clearly defined in legislation the role and importance of law enforcement intelligence-gathering activities in the formation of evidence. E. A. Dolya, who was researching this problem, noticed that the approach does not allow identification of the law enforcement intelligence-gathering activities results and court evidence, can correctly identify the role, value and limits of use as operational documents, and the results of the law enforcement intelligence-gathering activities in principle 4.

Let us also draw attention to the lack of criminal procedural regulation of the use of operational search tools in order to verify existing evidence. In the current legislation there is a rather laconic rate – Article 87 of the Russian Federation Code of Criminal Procedure which imposes a duty to verify the evidence on the evidence subjects, a check can be carried out through the association of that evidence with other evidence, to gather evidence and identify the sources of evidence collection.

It has become obvious that it is impossible to determine the sources of evidence without the use of operational search tools for this purpose. We propose to expand the Article 87 of the Russian Federation Code of Criminal Procedure, providing in it a provision on granting the investigator the right to give instructions to the body of inquiry in writing about the production of the law enforcement intelligence-gathering activities to verify the evidence. The results of these actions can be used in the evidence according to the above rules.

The organization and the law enforcement intelligence-gathering activities are a separate problem of interaction between criminally remedial and law enforcement intelligence-gathering elements. Their successful implementation is largely determined by thorough preparation. In this case, the condition for the effectiveness of the investigation is the fulfillment by operational staff of the investigator's instructions. If operational investigation teams are created, organizational problems are minimized, since in this case the role of the investigator as a leader becomes obvious. A lot of difficulties arise when these groups are not created, and instead they are given non-

systematic episodic assignments. In modern criminal procedure legislation, there is practically no mechanism for full and high-quality execution of the investigator's instructions, so in practice all issues are resolved mainly through his personal contacts. This is hardly a normal practice. The Russian Federation Code of Criminal Procedure should fix the possibility of bringing to disciplinary responsibility operatives who improperly execute the instructions of the investigator, delay this process or completely avoid it. The corresponding initiative, in our opinion, should come from the head of the investigative body on the recommendation of the investigator who is conducting a specific criminal case. Determine the nature of disciplinary responsibility can be entrusted to the head of the operational investigative body (Luginets, 2015).

At the same time the current Code of Criminal Procedure establishes a unique opportunity of the investigator to give assignments associated with the production of the organs of inquiry a separate inquiry actions (paragraph 4, part 2 of the Article 38 of the Russian Federation Code of Criminal Procedure). Quite naturally, the question arises as to whether these people are given all the necessary powers of an investigator. It would be logical to assume that they are, but the possibility of assigning procedural duties to persons with temporary status raises even more questions, along with the mechanism for holding them accountable if they commit procedural violations. The procedural requirements for persons who are not even required by law to have a special legal education are also unclear.

These problems are very interesting in theory and practice. The bodies of inquiry have the right to conduct investigative actions, but in the case of a preliminary investigation, the status of the person performing the procedural actions is designated as the status of the investigator. We believe that the meaning of guaranteed procedural procedures implies a specific subject of their implementation with the appropriate status and responsibility. Therefore, investigative actions carried out by persons without a fixed procedural status should not be allowed at the stage of preliminary investigation. Assistance to investigative activities by operational services should not constitute a "pseudo-process".

It is important to make changes to the law that would allow an investigator, if it is impossible to personally carry out a planned investigative action, to make it mandatory to contact the head of the investigative body with a request to perform an action by another investigator.

In a different way, the situation develops when the investigator selects explanations to check the reasons for initiating a criminal case. It carries out an operational event, but the procedural guarantees inherent in investigative activities ensure that the rights and legitimate interests of those involved in it are respected. In other words, an operational event becomes an investigative action in its content.

The law enforcement intelligence-gathering and criminally remedial component of the criminal process is expressed in the totality of investigative actions under the Articles 186, 186.1 and partially the Article 185 of the Russian Federation Code of Criminal Procedure. The investigator with obligatory participation of law enforcement intelligence-gathering authorities responsible for the monitoring and recording of conversations. It is difficult to imagine an investigator who directly independently performs a set of actions in this direction. On this basis, the law proposes to exclude such actions from the category of investigative actions, taking into account the fact that law enforcement intelligence-gathering legislation has their analogues 5.

We believe that this position is too categorical. In our opinion, the Commission of law enforcement intelligence-gathering actions under the Articles 186 and 186.1 of the Russian Federation Code of Criminal Procedure is justified. The purpose of investigative actions is to ensure that the investigation is already in progress, and the investigator solves the tasks of proving in the process. The involvement of operatives in the implementation of law enforcement intelligence-gathering actions differs significantly from the instructions given to them by the investigator during the investigation. In the latter case, operational employees choose an operational event or their

complex. The main task in this case is to solve the problem of establishing significant circumstances for the investigation. While in the first case, the investigator indicates only the action itself, but also predicts its result. The work of operatives is limited to technical assistance only. This does not in any way reduce the significance of the law enforcement intelligence-gathering activities in solving the investigation issues, but it is the investigator who assesses the feasibility of monitoring negotiations and obtaining information about subscriber connections based on the information received as part of the investigation. Here there is a harmonious symbiosis of the procedural content of the action and operational investigative means of its implementation. At the same time, we can note the special role of procedural control and procedural consolidation of results (Lotorev etal., 2017).

At the same time, it is impossible to identify investigative procedure and law enforcement intelligence-gathering actions. The development of the criminal procedure code of several States in the post-Soviet space (Estonia, Ukraine, etc.) has shown that this approach inevitably leads to a dilution of the nature and essence of the criminal process. According to supporters of the doctrinal model of criminal procedure, evidentiary law of the Russian Federation 6, the presence in the code of some "secret", "special" investigative actions will lead to the triumph of "process freedom" [7].

It seems that such procedural freedom would in fact become a disguise for procedural anarchy, since in this case the purpose of the criminal procedural form, which is provided as a guarantee of the legitimate interests and rights of the participants in the process, is reset. The nature of such actions does not have a strict legal form and mechanism of production, nor does it imply systemic responsibilities of the subjects. In this regard, it is logical to assume that these proposals become a conductor of the desire to radically revise the current system of evidence in criminal proceedings, and in the future, to abandon the traditional Russian criminal process as such.

It should be noted that law enforcement intelligence-gathering measures differ in their own special ways and means of organizing, applying results, and documenting. Combining them with investigative procedural actions can significantly complicate the solution of the tasks of criminal proceedings, which will inevitably lead to discussions about the admissibility of evidence that is collected as part of the production of "special" actions.

The involvement of operatives and their proxies as witnesses is another significant problem in criminal proceedings. Without them, it is often simply impossible to conduct an effective investigation and ensure trial in many criminal cases (crimes involving illegal trafficking in weapons, drugs, etc.). A system of measures is provided to guarantee the safety of this group of witnesses: the use of a pseudonym, interrogation in court under conditions that exclude the possibility of visual observation by other participants in the process, etc. However, very strange innovations are introduced in the paragraphs 5 and 6 of the Article 278 of the Russian Federation Code of Criminal Procedure. On the one hand, section 5 provides the assurance of identity concealment questioned, but, on the other hand, clause 6 allows you to read out this data if required by the interests of protection or identification of other significant circumstances. The peculiarity of the situation is spelled out in the part 2 of the article 12 of the Federal law " law enforcement intelligence-gathering activities", which introduces a direct ban on the interrogation of "confidants" without their written consent.

It seems that the solution to the problem refers to two points. People who have secretly assisted or are assisting the investigative authorities should have witness privileges (as in the case of close relatives of the accused), which give them the right to independently decide whether to act as witnesses or whether it is better to refuse to give their testimony. However, the Code must include no alternative indication of the questioning of people of this category under a pseudonym, and (or) in conditions that preclude visual observation, if the witnesses believe it is a real threat to their own safety or the safety of their families. All cases of "exceptions" that allow the disclosure of their true data should be removed from the criminal process [8].

From the above, it also follows the question of the participation of operatives in the decision on the need to ensure the safety and protection of victims and witnesses who make such statements. The potential danger and the degree of its reality is determined not by the investigator, but by the operatives. In this regard, it can be stated that the investigator's decision is due to their position. It is important to provide a special basis on which the investigator could give separate instructions to operatives to determine the grounds for ensuring the security of participants in criminal proceedings.

Effective application of law enforcement intelligence-gathering measures in the criminal process depends mainly on the definition of expansion and consolidation in the fundamental provisions governing the content of the law enforcement intelligence-gathering measures and the reasons for their implementation. Today, the Federal law "criminally remedial activities " does not have a norm similar to the Article 5 of the Russian Federation Code of Criminal Procedure, which contains the basic concepts used in the Russian Federation Code of Criminal Procedure.

At the same time, the development of this regulation would help to eliminate many problems related to the assessment of the validity of law enforcement intelligence-gathering measures in the criminal process, the observance of guarantees of the rights and interests of persons in respect of whom operatives are interested, and ultimately affect the decision on the admissibility of evidence collected on the basis of the law enforcement intelligence-gathering measures.

Clear definitions are particularly important for activities. In fact, all of them imply the active participation of the authorities implementing the law enforcement intelligence-gathering actions on people who are of operational interest. Note that the legality of these law enforcement intelligence-gathering measures data is very vague and often leads to provocations. The legislator takes into account the proposals of legal theory and the practical expediency of prohibiting provocations, so the corresponding norm was introduced. Provocation has become understood as a ban on the authorities implementing the law enforcement intelligence-gathering actions to incite, solicit, provoke in an indirect or direct form to commit illegal actions. If provocative elements are detected in the course of implementing the law enforcement intelligence-gathering measures, the collected evidence is not taken into account, which suggests that it is necessary to introduce a direct indication of this circumstance among the grounds for declaring the evidence inadmissible [9].

However, in practice, there are not only provocations. It is also necessary to clearly define the essence of operational search activities, which will help clearly establish the grounds for their conduct and eventually introduce in the Article 75 of the Russian Federation Code of Criminal Procedure a ban on the use as evidence of any information that was obtained on the basis of the law enforcement intelligence-gathering measures conducted in the absence of proper grounds.

Thus, all the above, in our opinion, does not mean that it is necessary to strive to combine two separate areas of law enforcement. However, the solution of similar tasks, the application of common methods and means peculiar to each type of activity, inevitably reveals the problems of the system of modern legal regulation, a clear delineation of areas of implementation of the law, the definition of appropriate restrictions and relationships. All this should be adequately implemented in a detailed legal regulation.

CONCLUSION

Summing up the results of this research, we note the following:

1. Probation while instituting criminal proceedings has its own characteristics, and the evidence is distributed according to a special classification. At the stage of instituting criminal proceedings, much attention is paid to how certain information is obtained, and how it relates to a specific crime. This information must be properly evaluated within the time limits set by law and comply with procedural decisions. When evaluating evidence,

the investigation is faced with the task of studying the elements of the structure of criminal procedural evidence: it is necessary to find out whether the evidence obtained indicates signs of a crime, if there are none, this leads to a refusal to initiate criminal proceedings. The evidence by the method of formation is divided into initial and derivative; by the nature of the components into direct and indirect; by the source into personal and material evidence. At the same time, none of the classifying features dominates the other.

2. It is proposed to amend the Russian Federation Code of Criminal Procedure by the changes which will determine more reliability at the stage of excitation of criminal cases, will contribute to more rapid confirmation of the body of evidence and will accelerate criminal proceedings in specific cases:

    - part 2 of the Article 140 of the Russian Federation Code of Criminal Procedure to set out in a new version, changing the indication of the presence of "sufficient data" to confirm the presence of signs of a crime, to "sufficient evidence": "the Basis for initiating a criminal case is the presence of sufficient evidence indicating signs of a crime»;
    - part 1 of the Article 148 of the Russian Federation Code of Criminal Procedure proposed to state in new edition: "In the absence of grounds for criminal proceedings, as well as in the circumstances listed in the Article 24 of the Russian Federation Code of Criminal Procedure, the investigator, body of inquiry or the inquirer shall pass a resolution on refusal to initiate criminal proceedings. Refusal to initiate a criminal case on the grounds provided for in paragraph 2 of part one of article 24 of this Code is permitted only in respect of a specific person."

3. As a result of the research, we have come to the conclusion that at present there is a need to expand the interaction of law enforcement intelligence-gathering and criminally remedial activities as a factor in the development of the system of proving information obtained at the stage of criminal proceedings. As concrete practical measures we propose the following changes to the current legislation of the Russian Federation:

    - To change the Article 87 of the Russian Federation Code of Criminal Procedure by including in it a direct indication that the subjects of criminal proceedings can instruct the bodies of law enforcement intelligence-gathering activities to check the evidence collected in the framework of criminal proceedings. These authorities will be able to legally participate in the proof process;
    - To state the Article 89 of the Russian Federation Code of Criminal Procedure in a new version: "the Results of are used in the process of proof for the formation and verification of evidence. The results of law enforcement intelligence-gathering activities are submitted to the inquirer, investigator, Prosecutor and to the court in accordance with the requirements provided for by operational search and criminal procedure legislation. The inquirer, investigator, Prosecutor and court are obliged to carry out the investigative actions provided for by this code in order to verify the legality and validity of the operational search measures carried out and the reliability of the results obtained»;
    - To expand the Article 87 of the Russian Federation Code of Criminal Procedure, providing in it a provision on granting the investigator the right to give the body of inquiry instructions in writing on the production of operational investigative actions to verify evidence. The results of these actions can be used in evidence according to the above rules;
    - To fix the possibility of bringing to disciplinary responsibility operatives who improperly execute the instructions of the investigator in the Russian Federation Code of Criminal Procedure, delay this process or completely avoid it. The corresponding initiative, in our opinion, should come from the head of the investigative body on the recommendation of the investigator who is conducting a specific criminal case. Determine the nature of disciplinary responsibility can be entrusted to the head of the operational investigative body;
    - To make changes to the current legislation that would allow the investigator, if it is impossible to personally carry out the planned investigative action, to contact the head of the investigative body with a request to perform the action by another investigator;
    - To provide in the Russian Federation Code of Criminal Procedure the possibility for people who have secretly assisted or are assisting the operational search authorities to have witness privileges (as close relatives of the accused), giving them the right to make an independent decision on whether to act as witnesses or better to refuse to give their testimony. However, the Code must include no alternative indication of the questioning of persons of this category under a pseudonym, and (or) in conditions that preclude visual observation, if the witnesses believe it is a real threat to their own safety or the safety of their families. All cases of "exceptions", which allow the disclosure of their true data, should be removed from criminal proceedings.

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